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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-314

WILLIS W. RITTER,

Petitioner,

v.

THOMAS K. KLEPPE, Secretary of the Interior, et al.

Respondents.

PETITION FOR REHEARING OF THE ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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Petitioner, Willis W. Ritter, respectfully moves the Court to rehear and reconsider its Order of November 11, 1975, denying the Petition for a Writ of Cer-

tiorari to the United States Court of Appeals for the Ninth Circuit on the ground this case establishes a far-reaching change in public land law and will affect hundreds of landowners as admitted by the Department of Interior itself (Pet. for Cert., App. H, pp. 3h-4h), and the Government is mistaken by asserting that the essential dispute between the parties merely concerns issues of fact (Memorandum of the Secretary of the Interior in Opposition to the Petition for a Writ of Certiorari, p. 3, hereinafter referred to as "Memorandum in Opposition"). The federal courts are already being burdened by a series of related cases where the Government, in effect, is encouraging the courts to abandon the rule in *Railroad v. Schurmeir*, 74 U.S. 272 (1868), *precisely* as we claimed in the Petition for a Writ of Certiorari. See pp. 6-7, *infra*. What has happened herein has far departed from the expected and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision in that substantial questions of federal law are being decided which should be settled by the Supreme Court and yet the Supreme Court has been grossly misinformed by the Memorandum in Opposition.

ARGUMENT

Throughout the long history of this litigation, the Government has asserted a series of arguments, designed to strip from the law the basic rule in *Railroad v. Schurmeir, supra,* and other related decisions of this Court, and thereby acquire thousands of acres of land over which it has not asserted jurisdiction or interest for three quarters of a century.

> "We think it a great hardship, and one not to be endured, for the government officers to make new surveys and grants of the beds of such lakes after selling and granting the lands bordering thereon, or represented so to be." *Mitchell v. Smale*, 140 U.S. 406, 412 (1891).

The controlling rule of law, the focal point at the trial and the basis for the district court's findings and judgment is statutory. Survey of Public Lands, 43 U.S.C.A. § 752. The statute was clearly and unequivocally interpreted and applied in *Railroad v. Schurmeir, supra.*

The statutory term applied by this Court in *Schurmeir*, and in a number of other cases and as quoted in the Surveyor's Manual, rests upon the phrase "WATER COURSE". It is absolutely vital, and its simple application should control the outcome of this case and hundreds of other cases pending on the Snake River in Idaho and Wyoming. The controlling rule of law is:

> "Meander lines are run in surveying fractional portions of the public lands bordering on navigable rivers, not as boundaries of the tract, but for the purpose of defining the sinuosities of the banks of the stream, and as the means of ascertaining the quantity of land in the fraction subject to sale, WHICH IS TO BE PAID FOR BY THE PURCHASER. In preparing the official plat from the field notes, the meander line is represented as the border line of the stream, and shows to a demonstration that THE WATER-COURSE AND NOT THE MEANDER LINE AS actually run on the land, is the BOUNDARY." 7 Wall. at 286-87. (Emphasis added.)

The district court on uncontroverted facts found that the water-course of the river was west of the disputed lands which were outside and upland (east) from the water-course of the Snake River. The Court of Appeals, without even mentioning the term "water-course" or reviewing or disturbing the uncontroverted facts or findings relating to its location, or questioning the fact that the surveyor was doing a good job in surveying the bank of the river, abandoned the simple statutory rule, *supra*, and incredibly held, contrary to every precedent ever rendered by this Court, that the surveyed meander line, rather than the water-course of the river was the boundary, even though no fraud or gross error was ever claimed or found to exist.

The Court of Appeals refused even to consider the simple statutory rule in *Schurmeir*. In defiance of the statute it embarked upon outlandish judicial legislation to require in every case an extensive review of all facts, not to determine the location of the water-course, but to ascertain the intent of the surveyor, who admittedly in this case did a good job in actually meandering the river. The Court of Appeals could not apply the statute and its notion of a factual review. They are entirely inconsistent. What the surveyor may have *intended* is absolutely foreign to any legal issue, since the Congress has established the "water-course" as the test. One test is subjective, the other looks to the certainty of a physical boundary. One is artificial and speculative, the other observable.

A final argument shows the absurdity of this arti-

ficial, non-legal subjective review of the *surveyor's intent*: It was used by the Court of Appeals to overcome *legislative intent.*

It is the "*water-course*" that the Congress and this Court set as the test of the boundary of a fractionalized subdivision, because it clears out the bits and pieces of land, which are the source of controversy.

Ignoring the proposition that the water-course controls, the Government has resurveyed thousands of acres of bits and pieces of land along the Snake River and has ordered hundreds of citizens to quit improved lands.

The Government's Memorandum in Opposition flatly misstated the holding of the Court of Appeals. The Government is simply wrong in stating that the Court of Appeals merely applied *Scott v. Lattig*, 227 U.S. 229, to the facts of this case and that the Court of Appeals did not create a new and far-reaching rule of law governing the determination of boundaries of fractional sections bounded by bodies of water. If that were true, the Court of Appeals would have had no need to discuss any of the "special circumstances" which consumes the major part of the opinion. In truth, *Scott v. Lattig, supra,* deals solely with riparian rights along a navigable river and was not decided on the rule in *Schurmeir* (227 U.S. at 244). The Act of Congress was not mentioned and there was no claim in *Scott* that the water-course was the boundary. The case is simply not in point. The Government knows this.

We are staggered by the proposition that at approximately the same time the Government was asserting to this Court in the Memorandum in Opposition that in the *Ritter* case the "essential dispute between the parties concerns issues of FACT, which have been thoroughly reviewed by the court of appeals (Ninth Circuit)" (emphasis added), the Government in companion cases in the Ninth and Tenth Circuits was relying upon the Ninth Circuit decision in the *Ritter* case for a proposition which would abandon the *Schurmeir* rule and the Act of Congress as a matter of LAW, thereby unsettling title to 16,000 acres of land and creating hundreds of conflicts along the Snake River in Idaho and Wyoming. See *Snake River Ranch v. United States of America* (U.S.D.C. Wyo.), No. C-74-91, on appeal C.A. 10th, No. 73-1702, and the Government's Docketing Statement and Opposition to Motion to Affirm filed with the Court of Appeals. In *Ruby v. Hickel*, C.A. 9th, No. 75-411, the Government in its Brief for the United States, expressly recognized that *Ritter v. Morton*, established a "special circumstances" rule, as demonstrated herein in the Petition for a Writ of Certiorari. The Government's Brief states a revolutionary rule of law, *exactly* as we claimed in the Petition for a Writ of Certiorari:

> "As stated by this Court in *Ritter v. Morton*, 513 F.2d 942 (1975) and asserted by the Ruby Company, it is a well-established general rule that the owner of land which an official survey and patent describe as riparian and bounded by a meander line of a body of water ordinarily takes title to any lands lying between the meander line

established by the official survey and the actual location of the body of water. See e.g. *United States v. Lane*, 260 U.S. 662, 664 (1923); *Producers Oil Co. v. Hanzen*, 238 U.S. 325, 338-339 (1915) and *Whitaker v. McBride*, 197 U.S. 510 (1905).

This "general rule" is, as this Court has recognized, not absolute and is subject to numerous exceptions under SPECIAL CIRCUMSTANCES where the totality of the situation requires meander lines to be construed as a strict boundary. If the totality of the circumstances surrounding the disputed survey indicates that substantial areas of the public lands were omitted through gross error or actual fraud *OR THAT THE SURVEYOR DID NOT INTEND TO INCLUDE THESE LANDS WITHIN HIS SURVEY*, the title to the lands not surveyed remains in the United States and the meander line becomes a strict boundary. The lands lying within the original meander lines are, as a matter of law, omitted public lands and subject to disposition by the United States as such. *Jeems Bayou Club v. United States*, 260 U.S. 561, 563-564 (1923); *Ritter v. Morton*, *supra*, 513 F.2d at 946-947. (Emphasis added.)

Unless favorable treatment is accorded this petition, eventually the demands and actions of the Secretary of the Interior appropriating thousands of acres of Snake River land will reach into and increasingly burden the federal courts throughout the land. Conflicts among the Circuits are inevitable involving an important question of federal law which should be settled by the Supreme Court. In the meantime, the rights of petitioner may be lost, unless this Court grants a writ to

review the rule of law formulated by the Ninth Circuit Court or, in the alternative, defers a ruling on this petition and stays the mandate until further developments take place in the litigation now pending before the United States Court of Appeals for the Ninth and Tenth Circuits.

We respectfully submit that this Court should reconsider its denial of certiorari.

Respectfully submitted,

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